

Appeal from decision of Wyoming State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease. W-30863.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

BLM does not have the authority to reinstate a noncompetitive oil and gas lease which expired at the end of its 2-year extended term because of lack of production in paying quantities.

2. Board of Land Appeals -- Regulations: Force and Effect as Law --
Secretary of the Interior

A duly promulgated Departmental regulation has the force and effect of law and is binding upon all officials of the Department, including the Board of Land Appeals and the Secretary, and may not be waived.

APPEARANCES: Joe L. Horne, Esq., New Orleans, Louisiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Joseph J. C. Paine has appealed from a decision of the Wyoming State Office, Bureau of Land Management (BLM), dated May 15, 1984, denying his petition for reinstatement of noncompetitive oil and gas lease W-30863.

Effective October 1, 1971, BLM issued a 10-year noncompetitive oil and gas lease to Gene Arakaki for 280 acres of land situated in the E 1/2 E 1/2, S 1/2 SW 1/4, and SW 1/4 SE 1/4 sec. 24, T. 47 N., R. 90 W., sixth principal meridian, Washakie County, Wyoming, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). Effective July 1, 1980, BLM approved an assignment of the record title interest in the lease to appellant. By decision dated October 15, 1981, BLM granted appellant a 2-year extension on the lease, until September 30, 1983, because drilling operations were in progress at the end of the lease's primary term.

By letter dated April 24, 1984, appellant requested BLM to reinstate oil and gas lease W-30863, which had expired on September 30, 1983, at the

end of its 2-year extended term. Appellant stated that BLM has the discretion to reinstate leases, upon payment of the late rental, in the interest of achieving production and that appellant is the closest to achieving production from "Sherard Dome lands," including the land involved herein, having spent considerable money on an extensive drilling program over a 5- to 6-year period of time. Appellant submitted a check for payment of rental from October 1, 1983, to October 1, 1984, with interest computed at the rate of 12.5 percent. Appellant further stated that reinstatement would not affect the intervening rights of any third parties, with the exception of A. Z. Shows, whose conflicting noncompetitive oil and gas lease offer overlapped to the extent of 120 acres, but that Shows would "recognize the equitable title of [appellant]."

By letter dated April 25, 1984, appellant submitted an "informal" application, along with the filing fee and first year's rental, for a 40-acre tract of land, described as the SW 1/4 NE 1/4 sec. 24, T. 47 N., R. 90 W., sixth principal meridian, Washakie County, Wyoming. Appellant stated that this tract had not been included in his oil and gas lease W-30863 but was included in Shows' lease offer, and that Shows was "prepared to recognize the equitable claim of [appellant]." Appellant noted that Shows' lease offer was involved in an appeal pending before the Board, and that Shows was prepared to withdraw his appeal.

In its May 1984, decision, BLM concluded that appellant's lease had expired at the end of its extended term and that there was no provision for reinstatement of the lease in such circumstances. BLM stated that the lands would become available for leasing under the simultaneous oil and gas leasing system, unless they were declared to be within a known geologic structure (KGS) of a producing oil or gas field. BLM also stated, with respect to the 40-acre tract of land (SW 1/4 NE 1/4) that it was not available for leasing pursuant to an over-the-counter lease offer, but was only available under the simultaneous oil and gas leasing system or through a competitive sale, if declared to be within a KGS. BLM noted that it had rejected Shows' lease offer for the same tract for the same reason.

In his statement of reasons for appeal, appellant states that the 40-acre tract (SW 1/4 NE 1/4) should be leased to Shows because his lease offer was filed first, the land sought only by appellant should be leased to him and the land sought by both Shows and appellant should be leased "jointly." Appellant concludes that this is a "fair and equitable solution." Appellant also incorporates the statement of reasons filed by Shows in connection with his appeal.

The Board recently decided the case of A. Z. Shows, 82 IBLA 86 (1984), involving noncompetitive oil and gas lease offer W-87574, which is the Shows' lease offer cited by appellant. In that case, we affirmed BLM's rejection of the lease offer, filed over-the-counter, because the land sought had previously been included in leases which had expired and was, thus, subject to leasing only under the simultaneous oil and gas leasing system in accordance with 43 CFR 3112.1-1(a), or through a competitive sale, if the land was declared to be within a KGS. Appellant's "informal" application, similarly filed over-the-counter, assuming it is construed to be a lease offer (see 43 CFR 3111.1-1(a)), would fail for the same reasons cited in Shows. Moreover, in Shows, we carefully considered all of the arguments advanced by Shows, and adopted by appellant on appeal herein.

[1] Appellant's remaining contention is that oil and gas lease W-30863, which expired at the end of its extended term, should be reinstated. Section 17(e) of the Mineral Leasing Act, as amended, 30 U.S.C. § 226(e) (1982), provides that a noncompetitive oil and gas lease may be extended for 2 years after its primary term in the case of actual drilling operations, commenced prior to the end of the primary term and diligently prosecuted thereafter, and "so long thereafter as oil or gas is produced in paying quantities." There is no question in the present case that appellant's lease expired at the end of its extended term. The question posed by appellant is whether appellant is entitled to "reinstatement" of an expired lease.

Section 31 of the Mineral Leasing Act, as amended, 30 U.S.C. § 188 (1982), provides the only circumstances under which an oil and gas lease may be reinstated, i.e., where a lease has terminated automatically by operation of law for failure to pay the annual rental on or before the lease anniversary date. Neither the statute nor the Departmental regulations provide BLM with authority to reinstate an oil and gas lease which expired at the end of its term because of lack of production in paying quantities. Cf. Roy W. Reed, 7 IBLA 321 (1972). In such circumstances, the lease has ceased to exist and the right to explore for and develop the underlying oil and gas deposits may only be acquired through a new lease.

[2] Lands included in leases which have expired are subject to leasing only under the simultaneous oil and gas leasing system, if the lands are not within a KGS. 43 CFR 3112.1-1(a). BLM is bound to follow duly promulgated regulations and does not have the discretion to reinstate an oil and gas lease which has expired regardless of the relative merits of the simultaneous or the over-the-counter system, or the need for domestic production of oil or gas. Moreover, the Courts have held consistently that a duly promulgated regulation has the force and effect of law, and is binding upon all Departmental officials, including this Board and the Secretary, and may not be waived. See, e.g., Vitarelli v. Seaton, 359 U.S. 535 (1959); Accardi v. Shaughnessy, 347 U.S. 260 (1954); Chapman v. Sheridan Wyoming Co., 338 U.S. 621 (1950); McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955); Associates v. City of Newark, 424 F. Supp. 984 (D.N.J. 1977); Wilfred Plomis, 34 IBLA 222 (1978).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

James L. Burski Edward W. Stuebing
Administrative Judge

Administrative Judge